IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.18452 of 2004
and
W.P.M.P.No.42268 of 2004

M.Beeman ... Petitioner

Vs.

The Superintendent of Police,
Kancheepuram District. ... Respondent

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : M/s.V.Raghavachari
For respondents : Mr.C.Thirumaran – G.A.

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in D.O.1148/2004,C.No.J1/PR 190/2002, dated 31.05.2004, and quash the same and consequently, to reinstate the petitioner in service with all back wages, monetary and other attendant benefits.

2.Heard the learned counsel for the petitioner as well as for the respondent.

3.The brief facts of the case, leading to the filing of the writ petition, are as follows:-

The petitioner was initially appointed as a Police Constable Grade-II in the year 1994. Later, he was given a promotion as Police Constable Grade-I in the year 1997, and as a Head Constable in the year 2002. The petitioner has been discharging his duties without any complaint whatsoever. While so, the respondent had issued a suspension order on 12.11.2002, suspending the petitioner from service on the ground that grave charges were contemplated for his misconduct in having utilised his Kawasaki Bajaj Motor Cycle bearing registration No.TN-21-U-8642 for illicit transport of Rectified Spirit in Thirukalukundram Police Station in Crime No.489 of 2002,

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under Section 4(1)(aaa) and r(1-A) of TNP Act, read with 6 and 11 of Rectified Spirit Rules, 1959, on 08.09.2002, and having connived with prohibition offenders and for indulging in the trade of Rectified Spirit and for gross misconduct in having transported 10 cans Rectified Spirit in a car. It was alleged that the contraband was handed over to Malliga, wife of Durai Naicker, @ Arumugam, on 10.11.2002. In connection with the said act, a case was registered in Mammallapuram Prohibition Enforcement Wing (PEW), in Crime No.364 of 2002, under Section 4(1-A) and 4(1) (aaa) of TNP Act, read with Rules, 6 and 11 of Rectified Spirit Rules. The two charges framed against the petitioner, were as follows :-

> "1. Gross misdeamenour in involving himself in illicit transport of 350 liters of Rectified Spirit in Ambassador Car bearing Registration No.TN-U-2354 concerned in Thirukalukundram Police Station in Crime No.489 of 2002, under Section 4(1)(aaa) and 4 (1-A) of TNP Act, read with 6 and 11 of R.S Rules.
>
> 2.Gross misdeamenour in involving himself in illegal transportation of 10 cans of Rectified Spirit, on 10.11.2002, concerned in Mamallapuram PEW in Crime No.364 of 2002, under Section 4(1-A) and 4 (1)(aaa) of TNP Act."

4.In the order of suspension passed against the petitioner, it had been stated that the petitioner had utilised his Kawasaki Bajaj Motor Cycle for illicit transport of Rectified Spirit. Whereas, in count No.1 of the charge, it has been stated that he has involved himself in illicit transport of 350 liters of Rectified Spirit in Ambassador Car bearing registration No.TN-U-2354. In the count No.1 of the charge, the date of occurrence was mentioned as 08.09.2002. Whereas, in the statement of allegations, the date of occurrence has been mentioned as 10.11.2002. In the count No.2 of the charge, the statement of allegations says that there was reliable information that the petitioner had transported 10 more cans of Rectified Spirit, on 10.11.2002, in another vehicle and delivered the contraband to Malliga. Based on which, a case had been registered in Mammallapuram Prohibition Enforcement Wing (PEW) in Crime No.364 of 2002. In the suspension order for count No.2 of the charge, it has been stated that a car was used whereas, in the charge memo the vehicle was not named. On the other hand, in the statement of allegations, it has been stated that the petitioner had transported 10 cans of Rectified Spirit, on 10.11.2002, in another vehicle. Thus, the statement of allegations is contrary to count No.1 and 2 mentioned in the charge memo.

5.It has been projected in count No.1 and 2, as though the petitioner was involved in two criminal cases, namely, in Crime No.489 of 2002 and Crime No.364 of 2002, in different Police

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Stations. However, as on the date of filing of this Writ Petition, no criminal case was pending. On receipt of the charge memo, the petitioner had given an explanation, on 28.01.2003. Since the subsistence allowance was not paid, the petitioner could not participate in the enquiry and therefore, an ex-parte enquiry report was submitted in PR No.190 of 2002 on 10.10.2003. Finally, the respondent had passed the impugned order dismissing the petitioner from service in D.O/1148/2004, C.No.J1/P.R.190/2002, dated 31.05.2004, and the same was communicated to the petitioner only on 27.06.2004. Hence, the present writ petition has been filed by the petitioner raising various grounds as stated therein.

6.The learned counsel appearing on behalf of the petitioner had pointed out that in Crime No.364 of 2002, an order was passed by the District Munsif-cum-Judicial Magistrate, Thirukalukundram, on 30.01.2006, which stated "F.I.R. closed as action dropped". This was relating to Malliga, with whom the petitioner was allegedly linked in the illegal transportation of Rectified Spirit. From the Judgment in C.C.No.177 of 2003, in Crime No.489 of 2002, it is found that the petitioner is not involved in the alleged illegal transactions. It has also been pointed out by the petitioner that by an order, dated 28.01.2003, in O.A.No.343 of 2003, the Tamil Nadu Administrative Tribunal, Chennai, had held as follows:-

> "Therefore, while upholding the validity of the suspension order, a direction is given to reinstate the applicant and extract work from him. The department can proceed against him effectively in disciplinary proceedings."

7. It has also been pointed out by the petitioner that a Writ Petition in W.P.No.29941 of 2003 had been filed by the Superintendent of Police, Kanchipuram District. This Court by its order, dated 09.12.2003, had disposed of the Writ Petition holdings as follows :-

> "2.The Tribunal, in its order, dated 28.01.2003, passed in O.A.No.343 of 2003, has observed that the Department seems to have collected materials to connect the applicant with the clandestine transaction. This Court is of the view that some time limit must be fixed within which the Department should be directed to complete the enquiry.
>
> 3.We direct the Department to complete the enquiry within a period of six months from the date of receipt of a copy of this order. Till then, status quo as on date shall be maintained."

The Learned counsel appearing for the petitioner had also pointed out that in the Annexure-II of the charge memo, the statement

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of allegations was given. It reads as follows :-

> "On 10.11.2002 night, while conducting vehicle check, Thiru A.Govindaraj, Sub-Inspector of Police, Thirukklikundram P.S., seized the Ambassadar car bearing Regn.No.TNU-2354 in which 10 cans of Rectified Spirit were transported. Hariharan S/o Bheemaraj, Driver of the Car, and Durai S/o Mani, occupant of the car, and Selvan S/o Sabapthy, an associate of HC 162 Beeman of Tirukkalikundram P.S., who piloted the car in the motor cycle of Bheeman, were arrested. Selvam, when interrogated by the Sub-Inspector, disclosed that it was at the behest of Beeman, that he piloted the car using his motor cycle. The SI registered a case in Tirukkalikundram P.S.Cr.No.489/2002 u/s.4(1)(aaa) and 4 (1-A) TNP Act and seized both the Ambassdor car and the motor cycle.
>
> There is also reliable information that Beeman has transported 10 more cans of R.S. on 10.11.2002 in another vehicle and delivered the contraband to Malliga w/o Durai Naickar of Naduvakkarai. A case in Mamallapuram PEW Cr.No.364/2002 u/s.4(1-A) and 4(1) (aaa) TNP Act has been registered and Malliga arrested and remanded."

8.The petitioner had given a detailed explanation to the charge memo stating that he was transferred to Thiruporur, in the year 2001, without any reason. He had challenged the order of transfer before the Tribunal and the said order was set aside, since he had joined at the place to which he was transferred. However, he was suspended on the allegation that he was engaged in carrying Rectified Spirit from Veeranam to Nerumbur. The petitioner had stated that he was innocent and that he is not the owner of the motor cycle alleged to be involved in the illegal transportation of Rectified Spirit. The R.C.Book, Insurance papers and Tax receipt of the said vehicle would clearly reveal that the Motor cycle does not belongs to the petitioner. Moreover, the accused Selvam, Hariharan and Durai were handed over to the police by the petitioner. Without verifying the facts, the petitioner had been suspended. The petitioner had also stated that in the confessional statement of Malliga given before the Thirukalukundram Prohibition and Enforcement Wing, it could be clearly seen that there was no mention about the petitioner. The allegations made against the petitioner are false and baseless and they were levelled against the petitioner only to harass and victimise him, since he had challenged the order of transfer before the Tribunal. At the time the petitioner is said to have given 10 cans of Rectified Spirit to Malliga i.e.on 10.11.2002, the petitioner was on duty with the Governor of Bihar at Fisherman's Cove, near Mahabalipuram. Thereafter, the petitioner had gone with the Sub-

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Inspector of Police to take action against the Prohibition offenders as per the orders of the Deputy Superintendent of Police, Mahabalipuram. In Criminal C.M.P.No.2070 of 2003 in C.C.No.177 of 2003, it is seen that one A.Arjunan, son of Ayyakannu, is the petitioner who had filed a petition under Section 457, Criminal Procedure Code, praying for the return and interim custody of the motor cycle, which was allegedly in the illegal transportation of Rectified Spirit.

9.In the impugned order passed by the Superintendent of Police, Kanchipuram District, the respondent herein, it has been stated that the content of the charge have been vividly described in the statement of allegation. Eleven prosecution witnesses had been examined and seventeen prosecution exhibits had been filed during the enquiry. During the enquiry, all the prosecution witnesses had cogently narrated about the grave misconduct of the deliquent. It clearly proves that the petitioner had close relationship with Prohibition Offenders of the area in the illegal trade, including transportation and selling of Rectified Spirit. It had also been stated that an order had been passed by this Court, dated 09.12.2003, in W.P.No.29941 of 2003, directing the respondent to complete the oral enquiry within a period of six months from the date of receipt of a copy of the said order. The order passed by this Court was received by the office of the respondent only on 06.02.2004, whereas the enquiry had been completed by the Enquiry Officer on 10.10.2003, itself. The respondent had held that the petitioner had committed a grave misconduct and therefore, he was awarded the 'punishment of dismissal' from service.

10.The learned counsel appearing on behalf of the petitioner had vehemently contended that the impugned order of the respondent, dated 31.05.2004, is arbitrary and illegal. It has been passed without having any valid reasons. It has also been pointed out by the learned counsel for the petitioner that the other persons who are alleged to have been involved in the illegal transportation have been acquitted of the charge. While so, it is only the petitioner who has been victimised with the order of dismissal from service. While the charges of misdemeanor were found in favour of other accused persons, the petitioner could not be said to have assisted them in the illegal transportation, since the 'First Information Report' itself had been closed in Crime No.364 of 2002, based on which the allegations were made against the petitioner. Therefore, there could not have been further proceedings against him based on which the impugned order had been passed. Even though the Division Bench of this Court had passed an order, on 09.12.2003, in W.P.No.29941 of 2003, directing the department to complete the enquiry within a specified period and to maintain status quo till then, the authorities concerned had gone ahead with the proceedings against the petitioner and a final order had been passed against the petitioner dismissing him from service.

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In the impugned order of the respondent, dated 31.05.2004, it has been stated that an order had been passed by this Court on 09.12.2003, whereas, the enquiry against the petitioner had been completed on 10.10.2003, itself. If that be so, it was the duty of the respondent to have brought it to the knowledge of this Court. Therefore, it could be inferred that the respondent had not stated the true facts before this Court, with regard to the date of completion of the enquiry conducted against the petitioner and as such adverse inference should be drawn against the respondent herein.

11.The learned Government Advocate, appearing on behalf of the respondent had pointed out that, the connections of the petitioner with the accused was proved. According to the findings of the Enquiry Report, it is clear that the vehicle involved in the illegal transportation belonged to the petitioner and it had been registered in the name of the father-in-law of the petitioner. Further, the petitioner's involvement in the said transactions were proved beyond doubt. Even though, the petitioner had been given sufficient time to submit his explanation, he had not done so. The Tamil Nadu Administrative Tribunal in its order, dated 02.06.2004, in O.A.No.2312 of 2004, had clearly held as follows :-

> "2.The applicant has been served with a charge memo, dated 20.12.2002. The enquiry has been conducted and witnesses have been examined. The applicant participated in the enquiry and the enquiry report has been submitted to the disciplinary authorities. A copy of the enquiry report has been forwarded to the applicant by the memo, dated 20.04.2004, wherein the applicant has also been directed to submit his final representation. At this stage, without giving his final representation, he has come before this Tribunal for quashing the enquiry proceedings. This Judicial Tribunal cannot interfere at this stage of enquiry and the department has got every right to initiate disciplinary proceedings by holding an enquiry.
> 3.After the enquiry is over and final order are passed and if the final orders goes against the applicant, it is open to him to come and challenge it, that too after exhausting remedies of appeal and revision provided as per rules. I refuse to go into the merits of the case at this stage and therefore the application fails and the same is dismissed "

From the said order, it is clear that the petitioner had approached the Tribunal without submitting his final representation. It was also made clear that after the enquiry was over and final orders had been passed, it was open to the petitioner to challenge

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the same after exhausting the remedies of appeal and revision, provided as per the rules. Even though there is an appeal provision available to the petitioner under the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules, 1955, he had approached this Court without exhausting the same.

12.On a perusal of the records available and on analysing the rival contentions, this Court is of the considered view that the petitioner has not shown sufficient cause to persuade this Court to interfere with the impugned order passed by the respondent. The petitioner had been accused of a serious misconduct of being involved in the illegal trade of Rectified Spirit, along with the other accused persons. From the enquiry report, dated 10.10.2003, it is clear that there were sufficient grounds to hold the petitioner guilty of the charges framed against him. The respondent had passed the impugned order, dated 31.05.2004, dismissing the petitioner from service, based on the said enquiry report. It is also seen that the petitioner had been given sufficient opportunity to defend himself against the charges levelled against him. While so, it cannot be said that the petitioner had been prejudiced due to denial of sufficient opportunity to defend himself against the charges. The concept of principles of natural justice cannot be a magic wand to wish away all evils, nor a remedy for all ills. It can only be used with sufficient care and caution and in situations which called for its application. A person who is a member of a disciplined force cannot be shown any sympathy. In the present case the petitioner has not made out valid or substantial grounds to set aside the impugned order passed by the respondent, dismissing the petitioner from service. However, it is open to the petitioner to agitate the matter before the concerned authorities in the manner known to law. In such a case, it is for the authorities to consider and decide the same, on merits and in accordance with law, without being influenced by the observations made by this Court while disposing of the present writ petition. In such circumstances, the Writ Petition is dismissed. No costs. Consequently, the connected WPMP is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Superintendent of Police,
Kancheepuram District.

+1cc to Govt. Pleader Sr 5550
+1cc to M/s.V.Raghavachari, Advocate SR 5417

GK (CO)
km/15.2.

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